

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, following section 2072 of this title.

Effect of rule 44 on former section 670 of this title, see note by Advisory Committee under said rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under said rule 27, following section 3771 of Title 18, Crimes and Criminal Procedure.

§ 1744. Copies of Patent Office documents, generally.

Copies of letters patent or of any records, books, papers, or drawings belonging to the Patent Office and relating to patents, authenticated under the seal of the Patent Office and certified by the Commissioner of Patents, or by another officer of the Patent Office authorized to do so by the Commissioner, shall be admissible in evidence with the same effect as the originals.

Any person making application and paying the required fee may obtain such certified copies. (June 25, 1948, ch. 646, § 1, 62 Stat. 948; May 24, 1949, ch. 139, § 92 (c), 63 Stat. 103.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on section 127 of title 15, U. S. C., 1940 ed., Commerce and Trade, and title 28, U. S. C., 1940 ed., § 673 (R. S. § 892; Mar. 19, 1920, ch. 104, § 7, 41 Stat. 535; Mar. 4, 1925, ch. 535, § 2, 43 Stat. 1269).

For purposes of uniformity, words "written or printed," at the beginning of the section, were omitted. Similar sections in this chapter do not contain such words.

Words "or in his name attested by a chief of division duly designated by the commissioner," after "Commissioner of Patents," were omitted as unnecessary.

Changes in phraseology were made.

AMENDMENTS

1949—Act May 24, 1949, amended first par. of section by substituting "patents" following "relating to" in lieu of "registered trade-marks, labels, or prints", and by inserting "or by another * * * by the Commissioner" following "Commissioner of Patents".

TRANSFER OF FUNCTIONS

The functions of all officers of the Department of Commerce and all functions of all agencies and employees of such Department, were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 5, § 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees. The Patent Office, referred to in this section, is an agency of the Department of Commerce, and the Commissioner of Patents, referred to in this section, is an officer of such Department.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, following section 2072 of this title.

Effect of rule 44 on former section 673 of this title, see note by Advisory Committee under said rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under said rule, following section 3771 of Title 18, Crimes and Criminal Procedure.

§ 1745. Copies of foreign patent specifications and drawings.

Copies of the specifications and drawings of foreign letters patent, certified in the manner provided in section 1744 of this title, shall be prima facie evi-

dence of the fact of the granting of such letters patent and of the date and contents thereof. (June 25, 1948, ch. 646, § 1, 62 Stat. 948; May 24, 1949, ch. 139, § 92 (d), (e), 63 Stat. 103.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 674 (R. S. § 893).

Changes were made in phraseology.

AMENDMENTS

1949—Act May 24, 1949, § 92 (d), repealed former section 1745, relating to printed copies of patent specifications and drawings, and by section 92 (e) of said act May 24, 1949, renumbered former section 1746 to be section 1745.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, following section 2072 of this title.

Effect of rule 44 on former section 675 of this title, see note by Advisory Committee under said rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under said rule, following section 3771 of Title 18, Crimes and Criminal Procedure.

Chapter 117.—EVIDENCE; DEPOSITIONS

Sec.

1781. Foreign witnesses.

1782. Testimony for use in foreign country.

1783. Subpoena of witness in foreign country.

1784. Contempt.

1785. Privilege against incrimination.

DEPOSITIONS IN ADMIRALTY CASES

Revised Statutes, §§ 863—865, as amended, which relate to depositions de bene esse, when and how taken, notice, mode of taking, and transmission to court, provide as follows:

"Sec. 863. The testimony of any witness may be taken in any civil cause depending in a district court by deposition de bene esse, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any judge of any court of the United States, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases in rem, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

"Sec. 864. Every person deposing as provided in the preceding section [R. S. § 863] shall be cautioned and sworn to testify the whole truth, and carefully examined.

"His testimony shall be reduced to writing or type-writing by the officer taking the deposition, or by some

person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. [As amended May 23, 1900, ch. 541, 31 Stat. 182.]

"Sec. 865. Every deposition taken under the two preceding sections [R. S. §§ 863, 864] shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause."

R. S. §§ 863—865, as amended, quoted above, are applicable to admiralty proceedings only. Proceedings in bankruptcy and copyright are governed by rule 26 et seq. of Federal Rules of Civil Procedure. See also General Orders in Bankruptcy Nos. 37 and 38, following section 53 of Title 11, Bankruptcy, and Rule 1 of Copyright Rules of Practice, following section 101 of Title 17, Copyrights.

FEDERAL RULES OF CIVIL PROCEDURE

Depositions and discovery, see rules 26—37, following section 2072 of this title.

Persons before whom depositions may be taken in foreign countries, see rule 28 (b).

Subpoena for taking depositions, see rule 45 (d).

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for taking depositions in criminal cases, see rule 17 (f), following section 3771 of Title 18, Crimes and Criminal Procedure.

§ 1781. Foreign witnesses.

Whenever a court of the United States issues letters rogatory or a commission to take a deposition in a foreign country, the foreign court or officer executing the same may make return thereof to the nearest United States minister or consul, who shall endorse thereon the place and date of his receipt and any change in the condition of the deposition, and transmit it to the clerk of the issuing court in the manner in which his official dispatches are transmitted to the United States Government. (June 25, 1948, ch. 646, § 1, 62 Stat. 948.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 653 (R. S. § 875; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Word "officer" was substituted for "commissioner" to obviate uncertainty as to the person to whom the letters or commission may be issued.

The third sentence of section 653 of title 28, U. S. C., 1940 ed., providing for admission of testimony "so taken and returned" without objection as to the method of return, was omitted as unnecessary. Obviously, if the method designated by Congress is followed, it cannot be objected to.

The last sentence of section 653 of title 28, U. S. C., 1940 ed., relating to letters rogatory from courts of foreign countries, is incorporated in section 1782 of this title.

The revised section extends the provisions of section 653 of title 28, U. S. C., 1940 ed., which applied only to cases wherein the United States was a party or was interested, so as to insure a uniform method of taking foreign depositions in all cases.

Words "courts of the United States" were inserted to make certain that the section is addressed to the Federal rather than the State courts as obviously intended by Congress.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Persons before whom depositions may be taken in foreign countries, see rule 28 (b), following section 2072 of this title.

§ 1782. Testimony for use in foreign country.

The deposition of any witness within the United States to be used in any judicial proceeding pending in any court in a foreign country with which the United States is at peace may be taken before a person authorized to administer oaths designated by the district court of any district where the witness resides or may be found.

The practice and procedure in taking such depositions shall conform generally to the practice and procedure for taking depositions to be used in courts of the United States. (June 25, 1948, ch. 646, § 1, 62 Stat. 949; May 24, 1949, ch. 139, § 93, 63 Stat. 103.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., §§ 649—653, 701, 703, 704 (R. S. §§ 871—875, 4071, 4073, 4074; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921).

Sections 649—652 of title 28, U. S. C., 1940 ed., applied only to the District of Columbia and contained detailed provisions for issuing subpoenas, payment of witness fees and procedure for ordering and taking depositions. These matters are all covered by Federal Rules of Civil Procedure, Rules 26—32.

Provisions in sections 649—652 of title 28, U. S. C., 1940 ed., relating to the taking of testimony in the District of Columbia for use in State and Territorial courts were omitted as covered by section 14—204 of the District of Columbia Code, 1940 ed., and Rules 26 et seq., and 46 of the Federal Rules of Civil Procedure.

Only the last sentence of section 653 of title 28, U. S. C., 1940 ed., is included in this revised section. The remaining provisions relating to depositions of witnesses in foreign countries form the basis of section 1781 of this title.

Sections 701, 703, and 704 of title 28, U. S. C., 1940 ed., were limited to "suits for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest."

The revised section omits this limitation in view of the general application of the last sentence of section 653 of title 28, U. S. C., 1940 ed., consolidated herein. The improvement of communications and the expected growth of foreign commerce will inevitably increase litigation involving witnesses separated by wide distances.

Therefore the revised section is made simple and clear to provide a flexible procedure for the taking of depositions. The ample safeguards of the Federal Rules of Civil Procedure, Rules 26—32, will prevent misuse of this section.

The provisions of section 703 of title 28, U. S. C., 1940 ed., for punishment of disobedience to subpoena or refusal to answer is covered by Rule 37 (b) (1) of Federal Rules of Civil Procedure.

The provisions of section 704 of title 28, U. S. C., 1940 ed., with respect to fees and mileage of witnesses are covered by Rule 45 (c) of Federal Rules of Civil Procedure. Changes were made in phraseology.

AMENDMENTS

1949—Act May 24, 1949, amended first par. of section by striking out the word "residing" following "witness", and by substituting "judicial proceeding" for "civil action" following "to be used in any".

CROSS REFERENCES

Fees of witnesses in the United States courts, see section 1821 of this title.

Letters rogatory from United States courts, see section 1781 of this title.

§ 1783. Subpoena of witness in foreign country.

(a) A court of the United States may subpoena, for appearance before it, a citizen or resident of the United States who:

(1) Has been personally notified in a foreign country to appear before a court thereof to testify pursuant to letters rogatory issued by such court of the United States, and who has failed to appear or has failed to answer any question which he would be required to answer were he being examined before such court of the United States; or

(2) is beyond the jurisdiction of the United States and whose testimony in a criminal proceeding is desired by the Attorney General.

(b) The subpoena shall designate the time and place for appearance before such court of the United States, and shall issue to any United States consul in such foreign country. The consul shall make personal service of the subpoena and any order to show cause, rule, judgment or decree on the request of the court of the United States or its marshal, and shall make return thereof to such court after tendering to the witness his necessary travel and attendance expenses, which shall be determined by such court and sent with the subpoena. (June 25, 1948, ch. 646, § 1, 62 Stat. 949.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., §§ 711, 712, and 713 (July 3, 1926, ch. 762, §§ 1—3, 44 Stat. 835).

Word "resident" was substituted for "or domiciled therein." (See reviser's note under section 1391 of this title.)

Words "or any assistant or district attorney acting under him," after "Attorney General" in section 712 of title 28, U. S. C., 1940 ed., were omitted, since, in any event, the approval of the Attorney General would be required. (See section 507 of this title.)

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Civil case, subpoena of witness in foreign country, see Rule 45 (e) (2), following section 2072 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal case, subpoena of witness in foreign country, see Rule 17 (e) (2), following section 3771 of Title 18, Crimes and Criminal Procedure.

§ 1784. Contempt.

(a) A court of the United States which has issued a subpoena served personally in a foreign country may order the witness who has failed to appear as directed therein to show cause before it at a designated time why he should not be punished for contempt.

(b) If security is given for any damage which the witness might suffer should the charge be dismissed, the court may direct, as a part of such order, that any property of the witness within the United States be levied upon or seized, in the manner provided by law or court rules governing levy or seizure under execution, and held to satisfy any judgment that may be rendered against the witness. The security required by this subsection shall not be required of the United States.

(c) The marshal making such levy or seizure shall forward to any United States consul within the country where the witness may be a copy of such order and a request that the consul make personal

service of the order on the witness. The marshal shall also cause the order to be published once each week for six consecutive weeks in some newspaper of general circulation in the district where the court which issued the order sits.

(d) On the return day of such order or any later day to which the hearing may be continued, proof shall be taken. If the charge of recusancy against the witness is sustained, the court may adjudge him guilty of contempt and, notwithstanding any limitation upon the power of the court generally to punish for contempt, may fine him not more than \$100,000 and direct that the fine and costs of the proceeding be satisfied unless paid by a sale of the property levied upon or seized, such sale to be conducted upon the notice required and in the manner provided for sales upon execution. Any such judgment rendered upon service by publication only may be opened for answer within one year. (June 25, 1948, ch. 646, § 1, 62 Stat. 949.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., §§ 714, 715, 716, 717, and 718 (July 3, 1926, ch. 762, §§ 4—8, 44 Stat. 836).

Sections 714—718 of title 28, U. S. C., 1940 ed., were consolidated, since all relate to contempt by a witness served personally in a foreign country.

The last sentence omits specific reference to section 118 of title 28, U. S. C., 1940 ed., now incorporated in section 1655 of this title, which provides for the method of opening judgments rendered on publication of process. (See also Rule 60 (b) of the Federal Rules of Civil Procedure.)

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Civil cases, contempt for failure to obey subpoena, see Rule 45 (f), following section 2072 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, contempt for failure to obey subpoena, see Rule 17 (g), following section 3771 of Title 18, Crimes and Criminal Procedure.

§ 1785. Privilege against incrimination.

A witness shall not be required on examination under letters rogatory to disclose or produce any evidence tending to incriminate him under the laws of any State or Territory of the United States or any foreign state. (June 25, 1948, ch. 646, § 1, 62 Stat. 950.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 702 (R. S. § 4072).

Changes were made in phraseology.

Chapter 119.—EVIDENCE; WITNESSES**Sec.**

- 1821. Per diem and mileage generally; subsistence.
- 1822. Competency of interested persons; share of penalties payable.
- 1823. United States officers and employees.
- 1824. Mileage fees under summons as both witness and juror.
- 1825. Payment of fees.

CROSS REFERENCES

Criminal cases, witnesses and evidence, see sections 3481 et seq. of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CIVIL PROCEDURE**Civil cases—**

Evidence, see Rule 43, following section 2072 of this title.

Subpoena for attendance of witnesses, see Rule 45 (a).